



**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY**

BULLETIN

2010-04

TO: All Insurance Companies and Surplus Lines Brokers Subject To Kentucky
Local Government Premium Taxes

FROM: Sharon P. Clark, Commissioner

RE: 2010-2011 Kentucky Local Government Premium Tax
Schedule and Listing Of Payees and Addresses

DATE: April 6, 2010

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance (the "Department") on the specified issue. The Bulletin is for informational purposes only and is not legally binding on either the Department or the reader.

Please review the information in this Bulletin carefully. This Bulletin contains information regarding changes to the annual reconciliation filing requirements and procedures. This Bulletin also contains changes to various tax rates imposed by local governments on premium receipts in accordance with KRS 91A.080.

I. Local Government Premium Tax

KRS 91A.080 authorizes local governments to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance. "Local government" is defined by KRS 91A.0802(1) as a "city, county, charter county, consolidated local government, urban-county government, or unified local government." Newly adopted or amended license fees or taxes become effective July 1 of each year on a prospective basis only. KRS 91A.080(1) requires the commissioner of insurance to notify each insurance company engaged in the business of insurance in the Commonwealth of the license fees or taxes no less than 85 days prior to the effective

date. Accordingly, attached are the 2010-2011 Kentucky Local Government Premium Tax Schedule and the listing of payees and addresses. Local governments that have adopted or amended their taxes, payees, or addresses since the publication of Bulletin 2009-01 (the 2009-2010 tax schedule) are indicated with an asterisk (*). **Please also note changes in tax code identifications.**

Surplus lines brokers are subject to the payment of local government premium taxes pursuant to KRS 304.10-180(1)(c). Consequently, surplus lines brokers are obligated to comply with the provisions of KRS Chapter 91A.080 as well as insurance companies. Insurance companies and surplus lines brokers must adopt procedures to conform to the 2010-2011 tax schedule by July 1, 2010. The 2010-2011 tax schedule applies only to **premiums received after** July 1, 2010 through June 30, 2011.

II. Determination of Tax Liability

To assist insurance companies and surplus lines brokers in determining the location of an insurance risk, the Department has published an LGPT Risk Location Chart on its Web site. Pursuant to KRS 91A.080, taxes are imposed on insurance risks located within the corporate limits of the local government. An insurance risk may not necessarily be located at the mailing address of the insured. It is imperative the insurance company/surplus lines broker identify the specific county and/or city in which the risk is located in order to properly assess the local government premium taxes. Further, ZIP codes shall not be used to determine local government premium tax liability.

Pursuant to KRS 91A.0806(6), on or after January 1, 2010, an insurance company/surplus lines broker shall employ a verified risk location system or program to assist the insurance company/surplus lines broker in identifying the location of an insurance risk. An insurance company/surplus lines broker may avoid penalties associated with the non-payment of local government premium taxes provided the insurance company/surplus lines broker utilizes a verified risk location system and performs due diligence in the location of insurance risks in accordance with KRS 91A.0806(4).

The insurance company/surplus lines broker must use the tax rate effective on the first day of the policy term. When an insurance company/surplus lines broker collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. The percentage tax rates are to be charged per policy.

III. Disclosure of Local Government Premium Tax

In accordance with KRS 91A.0810 and 806 KAR 2:092, if the local government premium tax is included in the premium charge to the policyholder, the insurance company shall disclose the amount of the local government tax charged for the period and the name of the taxing jurisdiction to which the local government tax is due. For newly issued policies, the disclosure shall be included on the policy, the declaration sheet, or the initial billing instrument. For renewed policies, the disclosure shall be included on the renewal certificate or the billing instrument for each period for which premium or additional premium is charged to the policyholder.

Insurance companies/surplus lines brokers should refer to 806 KAR 2:092 for further instructions regarding the contents of the disclosure.

Other disclosure provisions include:

- a. Disclosure of a local government tax shall not be required if the insurance company does not charge the tax to the policyholder.
- b. If local government tax is owed to multiple taxing jurisdictions, the disclosure shall list separately each taxing jurisdiction to which tax is owed.
- c. If a credit of a city tax is applied to a county tax pursuant to KRS 91A.080(12), and the result is that no tax is owed to the county, the disclosure is not required to include the county in the itemization of taxing jurisdictions required in subsection (3) of this section.
- d. If a collection fee is included in the amount charged to the policyholder, the disclosure shall state that the amount includes the tax and a collection fee.

IV. Special Instructions Related to Surplus Lines Business

Pursuant to KRS 304.10-180(1)(c), each surplus lines broker is required to pay the local government premium tax in accordance with KRS 91A.080.

Separate quarterly tax returns shall be submitted to the applicable local government by the surplus lines broker. Each return submitted to the local government shall include a listing of the insurance companies that supplied the coverage for which the premiums and taxes are being reported. This information shall be listed in the designated section of Form LGT-141. **Please note that surplus lines brokers are not required to submit a separate Form LGT-141 to each local government for each insurance company through which insurance business was exported.**

Annual reconciliations shall be filed with the Department of Insurance and the applicable local government by the surplus lines broker in accordance with Section XVI of this Bulletin. Each return submitted to the local governments shall include a listing of the insurance companies that supplied the coverage for which the premiums and taxes are being reported. This information shall be listed in Section III of Form LGT-140. **Please note that surplus lines brokers are not required to submit a separate Form LGT-140 to each local government for each insurance company through which insurance business was exported.**

V. Exemptions to Tax Liability

No license fee or tax shall apply to premiums collected on the following:

- Policies of group health insurance provided for state employees under KRS 18A.225;
- Health insurance policies issued to individuals including policies issued through Kentucky Access;
- Workers' compensation insurance;

- Annuities;
- Federal flood insurance;
- Municipal bonds, leases or other debt instruments issued by or on behalf of the local government unless the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations; or
- Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2), commonly referred to as Health Savings Accounts.

No license fee or tax shall apply to policies issued by

- Entities issued a certificate of authority to do business in Kentucky only as a health maintenance organization pursuant to KRS 304.38-060;
- Entities issued a certificate of authority to do business in Kentucky as a captive insurer pursuant to KRS 304.49-010; or
- Domestic life insurance companies electing to be taxed under the provisions of KRS 136.320 – Capital and Surplus Tax.

No **county** may impose the tax authorized by KRS 91A.080 upon premiums received on policies issued to public service companies which pay ad valorem taxes.

Additional exemptions may apply pursuant to the ordinance enacted by the local government. Please refer to the tax code for each local government identified on the attached schedule for additional information.

On policies naming a city or the State of Kentucky or one of its agencies as the insured, the license fee or tax may not be added to the policy premium. In this event, the insurance company/surplus lines broker remains responsible for the payment of the license fee or tax.

VI. Indivisible Premium

KRS 91A.080(8) requires a breakdown of all collections by category of insurance listed in the statute. Therefore, the appropriate premium must be allocated to the various lines before the applicable tax is calculated. For indivisible premiums, a weight of two-thirds of the premium must be given to the fire provision and one-third of the premium to the property and casualty provisions before determining the tax.

VII. Tax on Life Insurance

The tax on life insurance shall be based on the first year's premiums and applied to the amount actually collected within the first year.

VIII. Minimum Taxes

In some instances, a local government will enact a tax percentage as well as a minimum tax amount. In these instances, the policyholder may be responsible for payment of the calculated tax amount, based on the tax percentage, if the insurance company/surplus lines broker passes the tax to the policyholder. The insurance company/surplus lines broker is responsible for the difference between the calculated tax amount and the minimum tax amount. If the calculated tax, based on the tax percentage, is less than the

stated minimum tax, the insurance company must pay the minimum amount. If a local government has adopted only a minimum tax, the minimum tax shall be paid quarterly, per insurance company, and is not chargeable to the policyholder.

IX. Flat Fees

Flat fees shall be paid quarterly, per insurance company, and are not chargeable to the insured.

X. Collection Fees

Pursuant to KRS 91A.080(4), a reasonable collection fee may be charged and retained by the insurance company or its agent. The collection fee shall not be more than 15% of the tax collected and remitted to the local government or 2% of the taxable premium, whichever is less. This fee is in addition to the tax payable. If a refund or credit is received by an insurance company/surplus lines broker that passed the fee or tax on to the policyholder, and the amount refunded or credited is not owed to another local government, the insurance company/surplus lines broker is required to pay the full amount of the refund or credit, including any collection fee that has been retained, to the policyholder.

XI. Appeals for Tax Refunds, Credits, or Assessments

KRS 91A.0804 provides a sole and exclusive method for the filing of amended returns and requests or assessments by an insurance company/surplus lines broker, local government, or policyholder for nonpayment, underpayment, or overpayment of any license fee or tax imposed pursuant to KRS 91A.080. The procedures outlined in KRS 91A.0804 must be followed in order to properly request a refund or assessment related to nonpayment, underpayment, or overpayment of local government taxes.

For tax periods beginning after December 31, 2008, all amended returns, requests for refunds or credits, and assessments shall be made within two (2) years of the due date of the annual reconciliation (March 31) for the tax period during which the error was made. However, in the case of fraudulent failure to file a return or the filing of a fraudulent return, the underpayment may be assessed at any time.

XII. Unearned Premiums

In accordance with KRS 91A.080(3), where premiums are returned to policyholders, as in the instance of a policy cancellation, the license fee or tax shall be returned by the insurance company/surplus lines broker to the policyholder pro rata on the unexpired amount of the premium. The license fee or tax shall be returned at the same tax rate at which it was collected and shall be taken as a credit by the insurance company/surplus lines broker on its next quarterly report to the local government. Returned premiums shall be reported on the annual reconciliation Form LGT-140. If the tax rate of the returned premium is different from the tax rate of the quarter in which it was returned, the returned premiums and the rate at which they were returned must be listed as a separate line item.

The appeal procedures outlined in KRS 91A.0804 and referenced in Section XII of this Bulletin do not apply to credits claimed in accordance with KRS 91A.080(3).

XIII. Credit for City Tax Against County Tax

KRS 91A.080(12) requires insurance companies to credit city license fees or taxes against the county license fees or taxes imposed for the same license fees or taxes imposed by the county. This credit only applies if the county ordinance was enacted on or after July 13, 1990.

For reporting purposes, a credit of the city license fees or taxes against the county license fees or taxes must be taken and an LGT-142 form attached to the quarterly filing (Form LGT-141) and the annual reconciliation (Form LGT-140) if all of the following are true:

- The risk is located within the city limits;
- The county in which the city is located also imposes a tax;
- The county issued its ordinance on or after July 13, 1990; and
- The county license fee or tax for the applicable category (life, health, casualty, etc.) is higher than the city license fee or tax.

If a credit is required, the insurance company must pay the license fee or tax due to the city and pay the balance due to the county.

For July 1, 2010, through June 30, 2011, this credit applies to the following local governments:

Bullitt County

- Hebron Estates
- Shepherdsville
- Mount Washington

Hopkins County

- Dawson Springs
- Hanson
- Madisonville
- Nebo
- St. Charles
- White Plains

Jefferson County

- Glenview Manor
- Kingsley
- Ten Broeck

Mason County

- Dover

Meade County

- Ekron

Pulaski County

- Science Hill

Wayne County

- Monticello

XIV. Quarterly Payment of Taxes

License fees or taxes are due to the applicable local government thirty (30) days after the end of each calendar quarter. Each insurance company/surplus lines broker shall file separately, using form LGT-141 or a substantially similar form. These forms do not need to be filed with the Department of Insurance. However, pursuant to 806 KAR 2:070 and KRS 304.10-160, these forms must be retained for a minimum period of five (5) years. For more specific information regarding the filing of the quarterly tax return, please refer to the instructions for filing form LGT-141.

Quarterly filings should be submitted on Form LGT-141 or a substantially similar form.

XV. Penalties

Pursuant to KRS 91A.080(9), any license fee or tax not paid on or before the due date shall bear interest from the date due until paid. The Department of Revenue has set the interest rate on unpaid or underpaid taxes for 2010 at five percent (5%). Any interest due is payable to the applicable local government. In addition, the local government may assess a ten percent (10%) penalty on a license tax or fee not paid within thirty (30) days after the due date.

If, after an audit requested by a local government, the Department finds that an insurance company/surplus lines broker has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by KRS 91A.080(7), the Department may assess the responsible insurance company/surplus lines broker an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government. The penalty fee shall be paid to the local government owed the license fee or tax less any administrative costs of the Department in enforcing KRS 91A.080(7). Any insurance company/surplus lines broker held responsible for a penalty fee may request a hearing with the Department to be conducted pursuant to KRS 304.2-310 through 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.

In accordance with KRS 91A.0806(5), upon the presentation of proof that an insurance company has complied with the provisions of KRS 91A.0806(4) by performing due diligence in the location of risks and employing a verified risk location system or an alternative risk location method authorized by KRS 91A.0806(3), the insurance company/surplus lines broker:

- (a) Shall not be subject to penalties for failure to comply with KRS 91A.080 that may otherwise be imposed pursuant to KRS Chapter 304 or KRS 91A.080(7) for failure of a risk location system to properly locate risks;
- (b) Shall be held harmless from any liability including but not limited to liability for penalties, except for the tax that is due and interest on the tax that an insurance company has failed to timely remit, that would otherwise be due solely as a result of a failure to properly collect and remit the tax or fee levied pursuant to KRS 91A.080 because of the failure of a risk location system to properly locate risks; and
- (c) Shall not be subject to penalties under KRS 91A.0804(2)(c).

XVI. Annual Reconciliation

In accordance with KRS 91A.080(8), each insurance company/surplus lines broker shall file the Local Government Premium Tax annual reconciliation report on or before March 31st of each year to the applicable local government.

If an insurance company/surplus lines broker has not collected premiums for which a local government premium tax applies, the insurance company/surplus lines broker shall file an annual reconciliation with the Department indicating the reason that no local government premium taxes were due.

A filing fee of \$5.00 per insurance company/surplus lines broker shall be submitted with the annual reconciliation filing in a format compatible with the filing option chosen. The failure to remit the \$5.00 filing fee constitutes a violation of 806 KAR 2:095 and will result in administrative action.

A. Mandatory Electronic Annual Reconciliation Filing Requirements

The Local Government Premium Tax annual reconciliation report shall be submitted to the Department in an electronic format. **The Department no long accepts hard copy annual reconciliation reports.** Users may choose from two electronic options:

- Secure File Transfer Protocol (“SFTP”)
- E-Services Portal

Documentation on how to submit electronically is on the Department of Insurance website, at <http://insurance.ky.gov/kentucky/ALSearch/Rateform/Docs.aspx?DivID=10> under the heading “Annual Reconciliation Electronic Submission.”

B. Filing Options and Instructions

1. Secure File Transfer Protocol (“SFTP”)

If choosing the SFTP method, users must request access to the system by contacting the Department at DOI.ISHelpDesk@ky.gov or by calling: (502) 564-6154 X4359.

2. E-Services Portal

a. Surplus Lines Brokers

Access to electronically submit the annual reconciliation pursuant to KRS 91A.080 will automatically be added to any existing E-services account.

b. Insurance Companies

Insurance companies will need to establish an E-services account. The process to establish an account is outlined in the “User Documentation for Companies” section at: <http://insurance.ky.gov/kentucky/ALSearch/Rateform/Docs.aspx?DivID=10>.

c. Local Governments

Local governments that wish to view their data online may do so through E-Services. Local governments must request access to view the annual reconciliation data through an email sent to DOI.ISHelpDesk@ky.gov or by calling: (502) 564-6154 X4359.

C. Filing the Annual Reconciliation with Local Governments

The annual reconciliation shall be submitted electronically to the Department. However, insurance companies/surplus lines brokers shall continue to send hard copies of their annual reconciliation reports to the local governments. Filing electronically with the Department does not constitute compliance with the filing requirements for the local governments.

For more specific information regarding the filing of the annual reconciliation report, please refer to the instructions for filing form LGT-140.

Annual Reconciliation filings submitted to the local governments shall be on Form LGT-140 or a substantially similar form.

XVII. General Filing Rules for Amended Annual Reconciliation Tax Reports

- Amended Annual Reconciliation tax reports shall be filed on Form LGT-140.
- Do not staple pages of your filing together.
- No font smaller than 8 point shall be used when preparing the filings. Illegible or unreadable filings will not be accepted and will be returned to the filer for correction.

XVIII. Questions

Questions should be directed to the Local Government Premium Tax Unit. Phone: 502-564-1649; Fax: 502-564-6090; or e-mail: Brenda.Smith@ky.gov.

XIX. Attachments:

1. 2010-2011 Kentucky Local Government Premium Tax Schedule
2. 2010-2011 Kentucky Local Government Premium Tax Listing of Payees and Addresses
3. Form LGT-140, Annual Reconciliation
4. Form LGT-141, Quarterly Return
5. Form LGT-142, City Credits Against County Taxes
6. Annual Reconciliation User Guide for City/County Data
7. Annual Reconciliation User Guide for Companies
8. Annual Reconciliation User Guide for Surplus Lines Brokers